IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 402 OF 2005

Municipal Corporation of
Greater Mumbai. ... ... Appellant.

Versus

Smt. Fulibai Laduram Chawla.. ... Respondent.

Ms. Geeta Jogalekar i/by Ms. V. K. Khatu
for the Appellant.

Ms. Sumita S. Poddar for the Respondent.

CORAM : A. S. OKA, J.

DATED : 19TH APRIL, 2005.

P.C.:

Heard learned Advocates appearing for the parties.

2. Learned Advocate appearing for the Appellant / Defendant submitted that the impugned order dated 10th December, 2003 is a non-speaking order and no finding has been recorded in the said order regarding existence of prima facie case.

3. I have considered the submissions. It is not in dispute that in the year 1983 a suit was filed by the Respondent / Plaintiff for challenging action under Section 351 of the Mumbai Municipal Corporation Act, 1888. In the said suit, interim injunction was granted in favour of the Respondent / Plaintiff after hearing the Appellant Corporation. By order dated 19th March, 2001 the earlier suit was allowed to be withdrawn by the trial Court with liberty to the Respondent / Plaintiff to file separate suit on the same cause of action. In the fresh suit filed by the Respondent / Plaintiff, the order impugned has been passed and the interim protection has been granted to the suit structure.

4. As in the earlier suit temporary injunction was granted after hearing the parties and as the said interim injunction continued till the year 2001, in a fresh suit filed by the Respondent / Plaintiff on the basis of the leave granted by the trial Court, order of interim injunction has been passed. If the suit structure is protected right from the year 1983, no fault can be found in the impugned judgment and order.

5. Learned Advocate for the Respondent stated that

the suit is now ready for final hearing and the Respondent / Plaintiff has filed affidavit of examination-in-chief.

6. In this view of the matter, there is no merit in the appeal. The appeal from order is dismissed. There is no order as to costs.

7. All contentions of the parties on merits of the suit are expressly kept open. Hearing of the suit is expedited.

8. Parties and the concerned Court to act on an authenticated copy of this order.

Sd/-

(**A. S. OKA, J.**)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 261 OF 2004

IN

APPEAL FROM ORDER NO. 402 OF 2005

Municipal Corporation of
Greater Mumbai. ... ... Appellant.

Versus

Smt. Fulibai Laduram Chawla.. ... Respondent.

Ms. Geeta Jogalekar i/by Mr. V. K. Khatu
for the Appellant.

Ms. Sumita S. Poddar for the Respondent.

CORAM : A. S. OKA, J.

DATED : 19TH APRIL, 2005.

P.C.:

In view of the disposal of the Appeal from Order, this Civil Application does not survive. Hence rejected.

Sd/-

(A. S. OKA, J.)